

Message Text

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DOT:DROBB

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FM SECSTATE WASHDC

TO AMEMBASSY OTTAWA

UNCLAS STATE 300740

E.O. 11652:N/A

TAGS: SENV, CA

SUBJECT: DRAFT IJC REFERENCE ON GREAT LAKES LEVELS
REGULATION

1. EMBASSY IS REQUESTED TO DELIVER ATTACHED U.S. DRAFT
REFERENCE ON FURTHER REGULATION OF GREAT LAKES LEVELS TO
EXTAFF (BRADY) AS SOON AS POSSIBLE.

2. IN ADDITION, EMBASSY IS REQUESTED TO MAKE ORALLY THE
FOLLOWING POINTS:

(A) A SEPARATE LETTER TO THE IJC COVERING JURISDICTIONAL
QUESTIONS AND POSSIBLE AMENDMENT OF IJC ORDERS COVERING
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REGULATION OF LAKE SUPERIOR WILL BE FORWARDED TO EXTAFF
IN THE NEAR FUTURE.

(B) A U.S. LETTER TO THE IJC INFORMING THE COMMISSION OF

THE DEMONSTRATION PROGRAM REGARDING THE CHICAGO DIVERSION AND AN EXAMINATION OF SHORELINE EROSION ON LAKE ONTARIO CONTAINED IN THE WATER RESOURCES DEVELOPMENT ACT OF 1976, AND ASSURING THE IJC OF COORDINATION WITH ITS ACTIVITIES TO THE MAXIMUM PRACTICABLE EXTENT, IS PRESENTLY BEING DRAFTED.

(C) USG WOULD WELCOME CONSULTATIONS, EITHER IN WASHINGTON OR IN OTTAWA, EARLY IN JANUARY ON THE LAKE LEVELS ISSUE. OUR GOAL IS TO HAVE THE REFERENCE IN THE HANDS OF THE IJC BY EARLY FEBRUARY 1977. BEGIN TEXT --

DEAR MR. BULLARD:

I HAVE THE HONOR OF INFORMING YOU THAT THE GOVERNMENTS OF CANADA AND THE UNITED STATES, IN LIGHT OF THE COMMISSION'S REPORT ENTITLED "FURTHER REGULATION OF THE GREAT LAKES" (HEREINAFTER "THE REPORT") AND YOUR LETTER OF CLARIFICATION OF CERTAIN DECLARATIONS IN THE REPORT, DATED NOVEMBER 2, HAVE AGREED THAT THE COMMISSION SHOULD BE CHARGED, PURSUANT TO ARTICLE IX OF THE BOUNDARY WATERS TREATY OF 1909, WITH EXAMINATION AND REPORT UPON FURTHER MEASURES WHICH MIGHT BE TAKEN IN REGULATING THE GREAT LAKES SYSTEM SO AS TO REDUCE THE EXTREME RANGES OF STAGE WHICH HAVE BEEN EXPERIENCED.

THE TWO GOVERNMENTS HAVE THEREFORE CONCLUDED THAT THE COMMISSION SHOULD PURSUE THOSE REGULATORY POSSIBILITIES DISCUSSED IN THE REPORT, AND ENUMERATED HEREINBELOW, AS LIKELY TO AFFORD ECONOMICALLY AND ENVIRONMENTALLY ACCEPTABLE MEANS OF RELIEF FROM EXTREME FLUCTUATIONS IN LEVELS. SUCH POSSIBILITIES SHOULD BE EXAMINED WITH A VIEW TO REFINING PLANS OF REGULATION WHICH WOULD BE PRACTICABLE AND IN THE PUBLIC INTEREST FOR THE PURPOSE OF EFFECTING A MORE BENEFICIAL RANGE OF STAGE FOR, AND IMPROVEMENT IN:

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(A) DOMESTIC WATER SUPPLY AND SANITATION;

(B) NAVIGATION;

(C) WATER SUPPLY FOR POWER GENERATION AND INDUSTRIAL PURPOSES;

(D) AGRICULTURE;

(E) SHORE PROPERTY, BOTH PUBLIC AND PRIVATE;

(F) FLOOD CONTROL;

(G) FISH AND WILDLIFE, AND OTHER ENVIRONMENTAL ASSETS;

(H) PUBLIC RECREATION; AND

(I) OTHER BENEFICIAL PUBLIC PURPOSES THE COMMISSION MAY DEEM APPROPRIATE AND RELEVANT.

THE COMMISSION, CONSISTENT WITH THE PRINCIPLE OF SYSTEMIC REGULATION OF THE GREAT LAKES, WHICH IS ENDORSED BY THE TWO GOVERNMENTS, SHOULD EXAMINE SUCH PLANS IN LIGHT OF ANTICIPATED EFFECTS THROUGHOUT THE BASIN, INCLUDING THE INTERNATIONAL AND CANADIAN REACHES OF THE ST. LAWRENCE RIVER.

IN THE EVENT THAT THE COMMISSION SHOULD FIND THAT NEW OR ALTERED WORKS OR OTHER MEASURES EXAMINED PURSUANT TO THIS REFERENCE WOULD BE ECONOMICALLY AND ENVIRONMENTALLY PRACTICABLE IN LIGHT OF THE ABOVE-STATED PURPOSES, IT SHOULD ESTIMATE THE COSTS OF SUCH WORKS OR MEASURES AND ALSO INDICATE HOW THE VARIOUS INTERESTS ON EITHER SIDE OF THE BOUNDARY WOULD BE BENEFITTED OR ADVERSELY AFFECTED THEREBY. THE COMMISSION SHOULD LIKEWISE CONSIDER THE NEED FOR REMEDIAL OR COMPENSATING WORKS OR OTHER STEPS TO PROTECT OR INDEMNIFY INTERESTS POTENTIALLY ADVERSELY AFFECTED BY THE PROPOSED REGULATORY WORKS OR MEASURES, AND THE APPROXIMATE COST THEREOF. THE COMMISSION SHOULD FURTHER CONSIDER AS APPROPRIATE HOW SUCH COSTS MIGHT BE APPORTIONED AS BETWEEN THE TWO GOVERNMENTS OR UNCLASSIFIED

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CONCERNED INTERESTS IN EACH COUNTRY.

ON THE BASIS OF THE FOREGOING, THE TWO GOVERNMENTS REQUEST THE COMMISSION TO EXAMINE IN PARTICULAR:

1. POSSIBILITIES FOR IMPROVED REGULATION OF LAKE ONTARIO, TAKING INTO ACCOUNT THE RECENT EXPERIENCES IN REGULATION UNDER BOTH EXTREME HIGH AND LOW LEVEL CONDITIONS, AS DISCUSSED IN THE REPORT AND THE COMMISSION'S LETTER OF NOVEMBER 2.

2. A REFINED PLAN OR PLANS FOR REGULATION OF LAKE SUPERIOR, IN CONJUNCTION WITH REGULATION OF LAKE ONTARIO, WITH A VIEW TOWARDS PERMANENT IMPLEMENTATION OF THE OBJECTIVE OUTLINED IN THE COMMISSION'S 1973 SPECIAL INTERIM REPORT. THE COMMISSION SHOULD CONSIDER THE OVERALL PHYSICAL CONDITION OF THE EXISTING CONTROL STRUCTURE IN RECOMMENDING IMPROVEMENTS WHICH MIGHT BE NECESSITATED BY ADOPTION OF ANY GIVEN PLAN OF REGULATION. THE COMMISSION SHOULD ALSO CONTINUE TO MONITOR THE PROBLEM OF MAINTAINING THE SPORT FISHERY IN THE ST. MARYS RAPIDS IN LIGHT OF THESE STUDIES, AND THE PLANS

OF THE GREAT LAKES POWER COMPANY.

3. POSSIBILITIES OF REGULATING LAKE ERIE, AS OUTLINED IN THE REPORT, IN CONJUNCTION WITH REGULATION OF LAKES SUPERIOR AND ONTARIO.

4. THE NATURE AND EFFECTS OF THE VARIOUS EXISTING DIVERSIONS INTO AND OUT OF THE GREAT LAKES BASIN HAVING A MATERIAL EFFECT ON MANAGEMENT OF BASIN WATER LEVELS, AND PROPOSED CHANGES IN SUCH DIVERSIONS, OR PRACTICABLE PROPOSALS FOR NEW DIVERSIONS, WHICH MIGHT ENTAIL A SIMILAR EFFECT. THE COMMISSION IS REQUESTED TO CONSIDER THE REGULATORY POTENTIAL OF SUCH DIVERSIONS IN LIGHT OF THE VARIOUS REGULATION PLANS UNDER EXAMINATION.

5. THE EXISTING AND REASONABLY FORESEEABLE PATTERNS OF CONSUMPTIVE USE OF GREAT LAKES WATERS FOR DOMESTIC, SANITARY, INDUSTRIAL AND OTHER USES AND THEIR EFFECTS, ACTUAL OR ANTICIPATED, UPON LAKE LEVELS AND THEIR UNCLASSIFIED

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REGULATION.

6. (GOC TO PROVIDE DRAFT TEXT IN RESPONSE TO IJC RECOMMENDATIONS 4 AND 5.)

THE GOVERNMENTS RECOGNIZE THAT THE OBJECTIVE OF ENHANCED SYSTEMIC REGULATION MAY REQUIRE IMPROVED BILATERAL INSTITUTIONAL MACHINERY THROUGH THE MEDIUM OF THE INTERNATIONAL JOINT COMMISSION. IN ORDER TO CARRY OUT THE ABOVE STUDIES, THE COMMISSION MAY WISH TO ESTABLISH A BROAD-BASED GREAT LAKES LEVELS BOARD. SUCH A BOARD, CONCERNED WITH THE STUDY OF LEVELS REGULATION ON A BASIN-WIDE BASIS, COULD ALSO ENHANCE NECESSARY AND APPROPRIATE COORDINATION BETWEEN GREAT LAKES BOARDS OF CONTROL IN LIGHT OF EXISTING AND FUTURE PLANS OF REGULATION. IN ADDITION TO EXAMINATION OF NEW OR IMPROVED REGULATION PROPOSALS, IT MIGHT ALSO PROVIDE A MECHANISM FOR COORDINATION AS NECESSARY WITH THE WATER QUALITY ACTIVITIES CARRIED ON BY THE COMMISSION'S GREAT LAKES WATER QUALITY BOARD. FURTHER, THE COMMISSION MIGHT RELY ON SUCH A BOARD IN CONJUNCTION WITH THE EXISTING BOARDS OF CONTROL TO ENABLE IT TO NOTIFY GOVERNMENTS CONCERNING ACTIVITIES WHICH MIGHT IMPACT SIGNIFICANTLY ON GREAT LAKES LEVELS, SUCH AS STRUCTURAL IMPROVEMENTS AND DREDGING FOR NAVIGATION PURPOSES, PROGRAMS FOR WINTER ICE MANAGEMENT FOR NAVIGATION AND OTHER PURPOSES, SPECIFIC PROPOSED USES OF WATER INVOLVING CONSUMPTION IN OR DIVERSION FROM THE BASIN, AND OTHER ACTIVITIES IN EACH COUNTRY, PUBLIC AND PRIVATE, POTENTIALLY AFFECTING LEVELS REGULATION. UPON NOTIFICATION BY THE COMMISSION OF ANY SUCH ACTIVITY, THE GOVERNMENTS WOULD CONSIDER

WHETHER FURTHER SPECIFIC EXAMINATION AND REPORT IS DESIRABLE. FURTHER, THIS BOARD MIGHT UNDERTAKE AN EXAMINATION OF THE ADEQUACY OF THE PRESENT NETWORKS FOR THE COLLECTION AND EXCHANGE OF METEOROLOGICAL, HYDROLOGIC AND HYDRAULIC DATA ON THE GREAT LAKES BASIN. THE GOVERN-

MENTS VIEW THIS PORTION OF THE REFERENCE AS A SEVERABLE AND CONTINUING COMMISSION RESPONSIBILITY, WHICH NEED NOT TERMINATE WITH THE INTERNATIONAL JOINT COMMISSION'S REPORT ON OTHER MATTERS UNDER REFERENCE.
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IN THE OPINION OF GOVERNMENTS, ACTIVITY PURSUANT TO THIS REFERENCE SHOULD BE CARRIED OUT BY THE COMMISSION WITH THE FULLEST OPPORTUNITIES AFFORDED FOR PUBLIC SCRUTINY, COMMENT AND PARTICIPATION. IN THIS REGARD, THE COMMISSION MAY WISH TO CREATE A PUBLIC FORUM, LINKED TO THE NEW GREAT LAKES LEVELS BOARD WHICH WOULD ALLOW FOR SUCH PUBLIC INVOLVEMENT ON A REGULAR, CONTINUOUS BASIS. SUCH AN ARRANGEMENT MIGHT FACILITATE GREATER PUBLIC RECOGNITION OF THE SYSTEMIC COSTS AND LIMITS OF POTENTIAL REGULATION, AS WELL AS THE POSSIBLE BENEFITS, AND PROMOTE A BASIN-WIDE CONSENSUS AROUND THE EVENTUAL FINDINGS AND RECOMMENDATIONS OF THE COMMISSION. IN THIS SPIRIT, THE GOVERNMENTS BELIEVE SUCH A FORUM WOULD BE MORE APPROPRIATELY CREATED UNDER THE AEGIS OF A LEVELS BOARD OR OF THE COMMISSION, RATHER THAN A SPECIFIC BOARD OF CONTROL WITH LOCAL IMPLEMENTATION RESPONSIBILITIES. WE WOULD WELCOME THE VIEWS OF THE COMMISSION ON POSSIBLE INSTITUTIONAL ARRANGEMENTS ALONG THESE LINES.

THE GOVERNMENTS ARE PLEASED THAT THE INTERNATIONAL JOINT COMMISSION INTENDS TO PROVIDE AS WELL FOR THE FULL PARTICIPATION OF THE GREAT LAKES STATES AND PROVINCES ON A NEW GREAT LAKES LEVELS BOARD AND ANTICIPATE THAT THE COMMISSION WILL MAKE USE OF THE TECHNICAL EXPERTISE, ASSISTANCE, AND PERSONNEL WHICH AGENCIES OF SUCH PROVINCES AND STATES MIGHT MAKE AVAILABLE.

IN THE CONDUCT OF ITS INVESTIGATION AND THE PREPARATION OF ITS REPORT, THE COMMISSION SHOULD MAKE USE OF RELEVANT INFORMATION AND DATA HERETOFORE AVAILABLE, AND SUCH MATERIAL FROM SOURCES OTHER THAN THE COMMISSION'S ACTIVITIES WHICH MAY BECOME AVAILABLE DURING THE COURSE OF ITS INVESTIGATIONS. IN ADDITION, THE INTERNATIONAL JOINT COMMISSION MAY UTILIZE THE SERVICES OF ENGINEERS AND OTHER SPECIALLY QUALIFIED PERSONNEL FROM THE APPROPRIATE FEDERAL AGENCIES OF THE UNITED STATES AND CANADA. THE GOVERNMENTS SHALL MAKE AVAILABLE, OR AS NECESSARY, SEEK THE APPROPRIATION OF THE FUNDS REQUIRED FOR THE COMMISSION, AND SUCH FEDERAL AGENCIES IN BOTH COUNTRIES COOPERATING IN THE INVESTIGATION, TO DISCHARGE THE

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OBLIGATIONS UNDER THIS REFERENCE FULLY WITHIN THE
SPECIFIED TIME PERIOD. THE COMMISSION SHOULD DEVELOP AS
EARLY AS PRACTICABLE COST PROJECTIONS FOR THE STUDIES
UNDER REFERENCE FOR THE INFORMATION OF THE

TWO GOVERNMENTS.

IN VIEW OF THE CONTINUING CRITICAL LEVELS ON THE LAKES,
THE GOVERNMENTS REQUEST THAT THE COMMISSION, UPON THE
AVAILABILITY OF ADEQUATE FUNDING, PROCEED WITH THESE
STUDIES AS EXPEDITIOUSLY AS PRACTICABLE, AND REPORT TO
GOVERNMENTS NOT LATER THAN JANUARY 1, 1979. IF PORTIONS
OF THE INVESTIGATIONS UNDER REFERENCE SHOULD BE COMPLETED
PRIOR TO THAT TIME, THE COMMISSION SHOULD CONSIDER
WHETHER SUCH MATTERS MIGHT APPROPRIATELY BE THE SUBJECT
OF AN EARLIER, SEPARATE REPORT.

AN IDENTICAL LETTER IS BEING SENT TO THE SECRETARY OF THE
CANADIAN SECTION OF THE COMMISSION BY THE CANADIAN
DEPARTMENT OF EXTERNAL AFFAIRS.

VERY TRULY YOURS,

RICHARD D. VINE
DEPUTY ASSISTANT SECRETARY
FOR CANADIAN AFFAIRS -- END TEXT

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<< END OF DOCUMENT >>

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